

Declaration under 37 C.F.R. 1.132 and reconsideration to that end is respectfully requested.

The sole issue remaining is the Examiner's rejection of claims 1-4, 1-14, 16-18, and 20-22 under 35 U.S.C. 103(a) as unpatentable over U.S. Patent No. 5,621,892, issued to Cook (hereinafter referred to as "Cook") in view of U.S. Patent No. 6,347,330 B1, issued to Dawson et al (hereinafter referred to as "Dawson"). This ground of rejection is respectfully traversed for the following reasons.

To make a *prima facie* case of obviousness, MPEP 2143 requires the Examiner to show three things with regard to the alleged combination of Cook and Dawson: 1) motivation; 2) reasonable likelihood of success; and 3) all claim elements. The Examiner has failed to accomplish this. Therefore, the rejection of the Examiner is respectfully traversed for failure to make a *prima facie* case of obviousness.

In her only attempt at showing motivation, the Examiner states:

It would have been obvious to one of ordinary skill at the time of the invention to have combined Cook with Dawson et al because Dawson et al would let the user know that the specific alert type such as the system is unavailable (sic) because of insufficient memory.
(Emphasis added)

In other words, the Examiner apparently finds motivation in that Cook does not "let the user know the specific alert type". For the Examiner to be correct, Cook must send different types of alerts without providing a means for the receiver to determine

the significance of the alerts. This finding is ludicrous. Thus, the Examiner has not made any credible showing of motivation to make the alleged combination.

The second showing required by MPEP 2143 is "reasonable likelihood of success". The Examiner does not even acknowledge this requirement.

The third required showing is that all claimed elements must be shown in the alleged combination. Neither Cook, nor Dawson, nor the combination thereof shows an "unavailability message" which is present in the claims. Therefore, the Examiner has not made any of the three showings required by MPEP 2143. Thus, the rejection is respectfully traversed for failure of the Examiner to make a *prima facie* case of obviousness.

Furthermore, enclosed herewith is the Declaration of Barbara A. Christensen under 37 C.F.R. 1.132, which clearly removes Dawson as a reference. The effective date of Dawson as prior art is its filing date of September 4, 1998. As established by Ms. Christensen, the claimed invention was embodied in Cool ICE Revision 1.1 (see Exhibit B), which was on-sale as of November 14, 1997 (see Exhibit A). Therefore, Applicant's invention was made before the effective date of the Dawson reference. Dawson is thus not prior art.

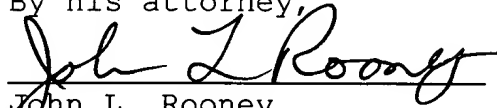
Having thus responded to each objection and ground of rejection, Applicants respectfully request entry of this amendment and allowance of claims 1-22, as amended, being the only pending claims.

Respectfully submitted,

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By his attorney,

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